



CRM-M-22388-2024

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-22388-2024
Date of decision : 22.07.2024

Manjeet Singh @ Bobby

... Petitioner

Versus

State of U.T. Chandigarh

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Sant Pal Singh Sidhu, Advocate
for the petitioner.

Mr.Manish Bansal, P.P.
for U.T. Chandigarh.

VIKAS BAHL, J.(ORAL)

1. This is the second petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.55 dated 09.04.2017 registered under Sections 307, 336, 34 IPC and Sections 25, 27 of the Arms Act, 1959 (Sections 302, 473 IPC have been added and Section 307 IPC has been deleted later on) at Police Station Maloya, District U. T. Chandigarh.
2. Learned counsel for the petitioner has submitted that the petitioner has been in custody since 12.02.2018 (more than 6 years and 4 months) and there are 26 witnesses, out of which, only 5 witnesses have been examined and thus, the trial is likely to take time. It is submitted that on the ground of long custody alone, the petitioner deserves the concession of regular bail as any further incarceration would be violative of the right of



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the petitioner enshrined under Article 21 of the Constitution of India. It is further submitted that an earlier bail application was filed by the petitioner, which was dismissed as withdrawn, at that stage on 17.05.2022 and in the said order, this Court had requested the trial Court to examine two witnesses i.e., Nirmal Singh, who was the complainant and Parminder Singh, who was the son of the deceased as expeditiously as possible and further States of Punjab, Haryana and U. T. Chandigarh were also directed to make all efforts to get the said witnesses examined either in person or through video conferencing. It is argued that in spite of lapse of more than 2 years from the passing of the said order, only witness Parminder Singh has been examined and with respect to witness Nirmal Singh, it is the stand of the Chandigarh Police that he is not traceable. Reference has also been made to the order passed by this Court on 09.05.2024 in support of his argument, with respect to long custody of the petitioner. Learned counsel for the petitioner has relied upon various orders of the Hon'ble Supreme Court, wherein, solely on the basis of the custody, the concession of bail has been granted. Reliance has also been placed upon an order of the Hon'ble Division Bench of this Court in ***CRM-3773-2019 in CRA-D-198-DB-2017*** titled as ***Bhupender Singh Vs. Narcotic Control Bureau***.

3. Learned Public Prosecutor for the U. T. Chandigarh, on the other hand, has opposed the present petition for regular bail and has submitted that the present petitioner is one of the main accused and as per the allegations in the FIR, he was armed with a pistol and he along with other persons had fired shots at Satnam Singh and said Satnam Singh had

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died on account of fire arm injuries. It is submitted that in the present case, Parminder Singh is also an eye witness, who has been examined and there is other material which shows the involvement of the present petitioner including the video footage of the incident. It is further submitted that as far as witness Nirmal Singh is concerned, he has not been examined as he is not traceable in spite of best efforts. It is stated that the weapon, which has been used in the present occurrence, has been recovered from the petitioner.

4. Learned counsel for the petitioner, in rebuttal, has submitted that the presence of the petitioner is not fully established from the said video footage and the source of the said video is also not clear and at any rate, the said aspect is a matter of trial. It is further submitted that the weapon has, even as per the case of the prosecution, been recovered in some other case and not in the present case.

5. This Court has heard learned counsel for the parties and has perused the paper book.

6. The petitioner is stated to be in custody since 12.02.2018 and out of 26 witnesses, only 5 witnesses have been examined and thus, the trial is likely to take time. The petitioner had earlier filed regular bail application, which was withdrawn at that stage by the petitioner on 17.05.2022 and this Court had requested the trial Court to examine the two witnesses i.e., complainant Nirmal Singh and Parminder Singh, who was the son of the deceased, as expeditiously as possibly and had further directed the States of Punjab, Haryana and U. T. Chandigarh to make all efforts to get the said witnesses examined either in person or through video



conferencing. On 09.05.2024, this Court had passed the following order:-

“Learned counsel for the petitioner has submitted that the petitioner has been in custody since 12.02.2018 and out of total 26 prosecution witnesses, only one has been examined. It is further submitted that solely on the basis of the custody, the petitioner deserves the concession of regular bail.

Learned counsel appearing for the UT Chandigarh has pointed out that in the present case, two witnesses i.e. Nirmal Singh and Parminder Singh have not been examined.

Learned counsel for the petitioner has submitted that in spite of elapse of more than 5 years, the said witnesses are not being produced before the trial Court, without there being any fault on the part of the petitioner.

Adjourned to 23.05.2024.

It is made clear that in case the said witnesses are not examined by the next date of hearing, the present case would be considered and adjudicated.

May 09, 2024”

7. It is not in dispute that till date witness Nirmal Singh has not been examined and it is the stand of U.T. Chandigarh police that he is not traceable in spite of best efforts. The fact is thus, even after passing of the order dated 17.05.2022, the said Nirmal Singh has not been examined and thus, the petitioner is entitled to concession of a regular bail solely on the ground of long custody as any further incarceration of the petitioner would be violative of the right of the petitioner enshrined under Article 21 of the Constitution of India.

8. The Hon'ble Supreme Court in its latest judgment dated 18.07.2024 passed in ***Criminal Appeal no.2790 of 2024*** titled as ***Sheikh***



Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. State of Uttar Pradesh

has held as under:-

“21. It is true that the appellant is facing charges under Section 489B IPC and under Section 16 of the UAP Act which carries a maximum sentence of life imprisonment, if convicted. On the other hand, the maximum sentence under Section 489C IPC is 7 years. But as noticed above, the trial is proceeding at a snail’s pace. As per the impugned order, only two witnesses have been examined. Thus, it is evident that the trial would not be concluded in the near future.

22. It is trite law that an accused is entitled to a speedy trial. This Court in a catena of judgments has held that an accused or an undertrial has a fundamental right to speedy trial which is traceable to Article 21 of the Constitution of India. If the alleged offence is a serious one, it is all the more necessary for the prosecution to ensure that the trial is concluded expeditiously. When a trial gets prolonged, it is not open to the prosecution to oppose bail of the accused-undertrial on the ground that the charges are very serious. Bail cannot be denied only on the ground that the charges are very serious though there is no end in sight for the trial to conclude.

23. This Bench in a recent decision dated 03.07.2024 in Javed Gulam Nabi Shaikh Vs. State of Maharashtra, Criminal Appeal No. 2787 of 2024, has held that howsoever serious a crime may be, an accused has the right to speedy trial under the Constitution of India. That was also a case where fake counterfeit Indian currency notes were seized from the accused-appellant. He was investigated by the National Investigating Agency (NIA) under the National Investigating Agency Act, 2008 and was charged under the UAP Act alongwith Sections 489B and 489C IPC. He was in custody as



an undertrial prisoner for more than four years. The trial court had not even framed the charges. It was in that context, this Court observed as under:

9. Over a period of time, the trial courts and the High Courts have forgotten a very well settled principle of law that bail is not to be withheld as a punishment.

XXX XXX XXX

32. This Court has, time and again, emphasized that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, K.A. Najeeb (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us.

33. Thus, having regard to the discussions made above, we are of the considered view that continued incarceration of the appellant cannot be justified. We are, therefore, inclined to grant bail to the appellant.”

9. The Hon'ble Supreme Court in case titled as "*Mohammad*



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22.08.2022 passed in **Special Leave to Appeal (Crl.) No.5530-2022** was pleased to observe as under: -

"We are inclined to release the petitioner on bail only on the ground that he has spent about two years in custody and conclusion of trial will take some time.

Consequently, without expressing any views on the merits of the case and taking into consideration the custody period of the petitioner, this special leave petition is accepted and the petitioner is ordered to be released on bail subject to his furnishing the bail bonds to the satisfaction of the Special Judge/ concerned Trial Court.

The special leave petition is, accordingly, disposed of in the above terms.

Pending application(s), if any, shall also stand disposed of."

The above-said case was a case under the NDPS Act and the FIR had been registered under Sections 8(c), 21(c) and 29 of the said Act. The case of the prosecution therein was that the recovery from the said petitioner (therein) was of commercial quantity. The Hon'ble Supreme Court had observed that the concession of bail was being granted to the petitioner (therein) only on the ground that he had spent about two years in custody and the conclusion of trial will take some time.

10. The Hon'ble Supreme Court in ***Criminal Appeal No.245/2020*** titled as "***Chitta Biswas Alias Subhas Vs. The State of West Bengal***", vide order dated 07.02.2020, was pleased to grant concession of bail to the petitioner (therein) in a case where the custody was of 1 year and 7 months approximately. The relevant portion of the said order dated 07.02.2020 is as



under: -

"Leave granted.

This appeal arises out of the final Order dated 30.7.2010 passed by the High Court of Calcutta in CRM No.6787 of 2019.

The instant matter arises out of application preferred by the appellant under Section 439 Cr.P.C. seeking bail in connection with Criminal Case No.146 of 2018 registered with Taherpur Police Station for offence punishable under Section 21-C of the Narcotic Drugs and Psychotropic Substances Act, 1985.

According to the prosecution, the appellant was found to be in possession of narcotic substance i.e. 46 bottles of phensydryl cough syrup containing codeine mixture above commercial quantity.

The appellant was arrested on 21.07.2018 and continues to be in custody. It appears that out of 10 witnesses cited to be examined in support of the case of prosecution four witnesses have already been examined in the trial.

Without expressing any opinion on the merits or demerits of the rival submissions and considering the facts and circumstances on record, in our view, case for bail is made out. We therefore, allow this appeal and direct as under:

(a) Subject to furnishing bail bond in the sum of Rs.2 lakhs with two like sureties to the satisfaction of the Judge, Special Court, NDPS Act, Nadia at Krishnagar, the appellant shall be released on bail.

(b) The Special Court may impose such other conditions as it deems appropriate to ensure the presence and participation of the appellant in the pending trial.



With the aforesaid directions, the appeal stands allowed."

11. Keeping in view the above said facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him not being required in any other case.

12. However, it is made clear that in case, any act is done by the petitioner to threaten or influence the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

13. Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

(VIKAS BAHL)
JUDGE

July 22, 2024
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No